



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

November 29, 1995

The Honorable Sonya Letson  
County Attorney  
Potter County  
303 Courthouse  
Amarillo, Texas 79101

Letter Opinion No. 95-074

Re: Whether section 25.0005 of the Government Code or section 25.1902 of the Government Code controls the amount of salary Potter County must pay the judges of its county courts at law and related question (ID# 30899)

Dear Ms. Letson:

You have asked two questions regarding the amount of salary Potter County must pay the judges of the Potter County courts at law. We understand you to ask first which statute controls the amount of salary Potter County must pay the judges of its county courts at law: Government Code section 25.0005 or Government Code section 25.1902(h). Your second and third questions are contingent upon a conclusion that section 25.1902(h) controls the amount of salary. You ask whether the phrases "annual salary" and "total salary" in section 25.1902(h) are synonymous, and if they are synonymous, you ask whether section 25.1902(h) requires a higher minimum salary than section 25.0005 requires.

Preliminarily, we note that the Seventy-fourth Legislature repealed section 25.1902(h), effective August 28, 1995. See Act of May 16, 1995, 74th Leg., R.S., ch. 242, § 1, 1995 Tex. Sess. Law Serv. 2151, 2151. Consequently, sections 25.0005 and 25.1902 of the Government Code no longer are arguably inconsistent, and section 25.0005 clearly dictates the amount the judges of the Potter County courts at law must be paid. You indicate, however, that a disagreement exists as to the proper salary to be paid prior to August 28, 1995. We therefore address your question as to the state of the law prior to August 28, 1995, and our response will discuss section 25.1902(h) as though it were not repealed.

Section 25.1901(a) of the Government Code establishes two county courts at law in Potter County. Section 25.1902, which provides the Potter County statutory county courts with jurisdiction in addition to that provided in section 25.0003 of the Government Code and lists qualifications for the judge of each court, provides salaries for the county court at law judges:

A judge of a county court at law may be paid an annual salary that is at least equal to the amount that is \$1,000 less than the total

salary paid the district judge in the county. The commissioners court shall pay the salary out of the county's general fund.

Gov't Code § 25.1902(h).

You inform us that, pursuant to section 51.702(a) and (b) of the Government Code, the Potter County Commissioners Court has opted to require the clerks of its statutory county courts to collect a twenty-dollar fee in each civil case and a ten-dollar court cost upon conviction of a criminal offense. Under section 51.702(d), a county clerk must remit to the comptroller on a regular basis the fees and costs a county clerk collects under subsections (a) and (b). Then, on the first day of each state fiscal year, the comptroller disburses to each county that collects fees and costs under section 51.702(a) and (b) an amount equal to \$25,000.00 for certain judges of county courts at law in the county. *See* Gov't Code § 25.0015(a).

Section 25.0005 of the Government Code, enacted by the passage of the same bill that enacted sections 51.702 and 25.0015, *see* Act of May 27, 1991, 72d Leg., R.S., ch. 746, §§ 4, 6, 67, 1991 Tex. Sess. Law Serv. 2621, 2621-22, 2637-38; *see also* Letter Opinion No. 94-48 (1994) at 3, pertains to the salary of a county court at law judge. *See generally Camacho v. Samaniego*, 831 S.W.2d 804, 806 n.4 (Tex. 1992) (discussing bill containing Government Code sections 51.702, 25.0005, and 25.0015, among other sections). Section 25.0005 provides in relevant part:

(a) A statutory county court judge, other than a statutory county court judge who engages in the private practice of law or a judge in whose court fees and costs under Section 51.702 are not collected, shall be paid a total annual salary set by the commissioners court at an amount that is at least equal to the amount that is \$1,000 less than the total annual salary received by a district judge in the county. A district judge's or statutory county court judge's total annual salary includes contributions and supplements, paid by the state or a county, other than contributions received as compensation under Section 74.051.<sup>1</sup>

(b) Subject to any salary requirements otherwise imposed by this chapter for a particular court or county, the commissioners court sets the salary of each statutory county court judge who engages in the private practice of law or in whose court fees and costs under Section 51.702 are not collected.

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<sup>1</sup>Section 74.051 of the Government Code provides that a presiding judge receives compensation in addition to all other compensation, expenses, and perquisites the judge receives pursuant to law.

(d) Notwithstanding Section 25.0001(a),<sup>2</sup> this section prevails over any other law that limits a particular statutory county court judge to an annual salary of less than the amount provided by Subsection (a), but does not affect a salary minimum set by other law that equals or exceeds the amount provided by Subsection (a).

(e) [Excepting county from meeting salary requirement of subsection (a) in a particular situation.] [Footnotes added.]

Evidently, the judges of the Potter County courts at law believe that section 25.0005(d) of the Government Code requires Potter County to pay its county court at law judges in accordance with section 25.1902(h), which they believe requires a higher minimum salary than the minimum salary section 25.0005(a) requires. They point out that section 25.0005(a) obligates a commissioners court to pay the judges of its county courts at law a "total annual salary" at least equal to an amount that is \$1,000.00 less than the "total annual salary" a district judge in that county receives. On the other hand, they contend that section 25.1902(h) mandates a minimum "annual salary" for a Potter County court at law judge that is at least equal to the amount that is \$1,000.00 less than the "total salary" paid the county's district judge. In the view of the judges, the phrase "annual salary" in section 25.1902(h) excludes compensation or supplements from the state or county, while the phrase "total salary" in the same section includes compensation or supplements from the state or county. We disagree with the judges' position.

Section 25.0005(a) requires a county that collects fees and costs pursuant to section 51.702 of the Government Code to pay the judges of its county courts at law a total annual salary "that is at least equal to the amount that is \$1,000 less than the total annual salary" a district judge in that county receives. Section 25.0005 provides certain exceptions to this salary requirement, but you do not indicate that, with the possible exception of subsection (d), any of the exceptions apply to Potter County. Subsection (d) states that, while section 25.0005 prevails over any other law limiting a statutory county court judge to a salary lower than that mandated by subsection (a), section 25.0005 does not affect a salary minimum "set" in another statute that equals or exceeds the salary mandated by subsection (a). Possibly, because section 25.1902 provides that a county "may" pay a judge of a county court at law an annual salary in the amount specified, section 25.1902 does not "set" a salary minimum for purposes of section 25.0005(d) of the Government Code. We need not resolve that issue here, however, for we conclude that the salary minimum section 25.0005(a) establishes is higher than the salary minimum section 25.1902 provides. Therefore, the Potter County Commissioners Court must comply with section 25.0005(a).

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<sup>2</sup>Section 25.0001(a) of the Government Code states that chapter 25, subchapter A (of which section 25.0005 is a part) "applies to each statutory county court in this state." However, if a provision in chapter 25, subchapter A "conflicts with a specific provision for a particular court or county, the specific provision controls."

Unless explicitly defined differently, *see* Letter Advisory No. 89 (1975) at 2, the term "salary" denotes compensation for services rendered, Attorney General Opinions JM-39 (1983) at 3, M-408 (1969) at 7; Letter Advisory No. 89 (1975) at 2; *see also* BLACK'S LAW DICTIONARY 1200 (5th ed. 1979). "Salary" does not include every benefit or perquisite an officer or employee receives, Attorney General Opinion M-408 (1969) at 7, nor does "salary" include expense reimbursement. Attorney General Opinion JM-39 (1983) at 3; Letter Advisory No. 89 (1975) at 2. Furthermore, this office previously has determined that, unless a statute expressly provides otherwise, a district judge's total salary does not include contributions pursuant to the Federal Insurance Contributions Act ("FICA"), 26 U.S.C. ch. 21. *See* Attorney General Opinion JM-322 (1985) at 3; Letter Opinion No. 93-19 (1993) at 2; *see also* Gov't Code §§ 606.026, .063 (authorizing political subdivisions and state, respectively, to pay contributions pursuant to FICA).

In accordance with our conclusion in Attorney General Opinion JM-322, we here determine that "total salary" as used in section 25.1902(h) does not include FICA contributions. Accordingly, we need not consider whether the phrases "annual salary" and "total salary," as section 25.1902(h) uses them, are synonymous because the phrase "total annual salary" in section 25.0005(a) sets a higher salary minimum. Section 25.0005(a) expressly defines "total annual salary" to include contributions and supplements. As this office determined in Letter Opinion No. 93-19, the phrase "total annual salary" in the context of section 25.0005 encompasses the portion of a judge's contribution the state or county pays pursuant to FICA. Letter Opinion No. 93-19 (1993) at 2.

Furthermore, we need not consider whether the term "total salary" in section 25.1902(h) of the Government Code includes supplements other than FICA contributions because section 25.0005(a)'s minimum salary is higher than that provided in section 25.1902(h) taking into account only FICA contributions.<sup>3</sup> Consequently, section 25.0005(a) sets the minimum salary for the judge of a county court at law in Potter County with which Potter County must comply. You aver that the Potter County Commissioners Court has set the salary of its statutory county court judges at the level

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<sup>3</sup>In addition, we believe it is questionable that the phrase "total salary" as used in section 25.1902(h) includes supplements other than FICA contributions. Prior to 1975, the statutory predecessor to section 25.1902(h) of the Government Code, V.T.C.S. article 1970-311b, section 20, *repealed by* Act of April 30, 1987, 70th Leg., R.S., ch. 148, § 4.02, 1987 Tex. Gen. Laws 534, 703, required simply that the judge of the Potter County Court at Law and the county judge of Potter County receive the same salary. In 1975 the legislature amended article 1970-311b, section 20 to require Potter County to pay the judges of the Potter County courts at law an "annual salary of not more than the total salary paid any District Judge in and for Potter County." Act of June 2, 1975, 64th Leg., R.S., ch. 645, § 20, 1975 Tex. Gen. Laws 1955, 1958. In 1979 the legislature enacted a statute setting the compensation of judges of the county courts at law in counties with a population of 1.2 million or more "at not less than One Thousand Dollars . . . less per annum than the total annual salary, including supplements, received by Judges of the District Courts in such counties." Act of May 12, 1979, 66th Leg., R.S., ch. 250, § 1, 1979 Tex. Gen. Laws 535, 535. We are unaware of any statute enacted prior to 1979 expressly including supplements in the total salary or total annual salary of a district judge.

section 25.0005(a) of the Government Code specifies. Based upon your assertion, we conclude Potter County has complied with the law.

### S U M M A R Y

In the context of section 25.1902(h) of the Government Code, which provides that the judge of a county court at law in Potter County "may be paid an annual salary that is at least equal to the amount that is \$1,000 less than the total salary paid the district judge in the county," the term "total salary" does not include the state's or county's contributions pursuant to the Federal Insurance Contributions Act, 26 U.S.C. ch. 21. On the other hand, section 25.0005(a) of the Government Code, which generally requires a county commissioners court in a county that collects fees and costs pursuant to section 51.702 of the Government Code to pay a statutory county court judge "an amount that is at least equal to the amount that is \$1,000 less than the total annual salary received by a district judge in the county," expressly defines the phrase "total annual salary" to include FICA contributions. Thus, the minimum salary section 25.0005(a) establishes is higher than the minimum salary provided in section 25.1902(h). *But see* Act of May 16, 1995, 74th Leg., R.S., ch. 242, § 1, 1995 Tex. Sess. Law Serv. 2151, 2151 (repealing section 25.1902(h)). Assuming that the Potter County commissioners court has set the salary of its statutory county court judges at the level section 25.0005(a) of the Government Code stipulates, it has complied with the law.

Yours very truly,

  
Kimberly K. Oltrogge  
Assistant Attorney General  
Opinion Committee